



GSA Federal Acquisition Service

April 12, 2013

Revised May 6, 2013

FAS INSTRUCTIONAL LETTER 2013-04**MEMORANDUM FOR ALL FAS ACQUISITION ACTIVITIES**

FROM:

HOUSTON W. TAYLOR
ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

A handwritten signature in blue ink, appearing to read "H. Taylor", is written over the typed name and title.

SUBJECT:

Contracting Officer Responsibilities Pursuant to GSA
Office of Inspector General Contract Audits

1. **Purpose.** The purpose of this Instructional Letter (IL) is to provide guidance on audit procedures, specifically the responsibilities of the Contracting Officer (CO) concerning GSA Office of Inspector General (OIG) contract reviews (i.e. audits).

This IL cancels and replaces Procurement Information Notice (PIN) 2006-02 and **Procurement Information Bulletin (PIB) 2005-2.**

2. **Background.** The OIG is an independent unit established by law, which is responsible for promoting economy, efficiency, and effectiveness, and detecting and preventing fraud, waste, and mismanagement in GSA's programs and operations. The OIG's mission is to help the GSA effectively carry out its responsibilities and to protect the public interest by bringing about positive changes in the performance, accountability, and integrity of GSA programs and operations. One of the ways the OIG meets its mission is through independent audits and reviews of contracts.

During the contract review process, OIG auditors discover pricing details, such as the terms and conditions of the Most Favored Customer (MFC) that the CO can use to negotiate better terms and conditions (including better prices) from the vendor. The auditors present findings and opinions in preaward contract audit reports or postaward contract audit reports. These findings often include amounts of "Funds Put to Better Use" or "Questioned Costs" which are potential recoveries/savings for the government. Funds Put to Better Use is found in preaward reports and represent the amount of unnecessary expenditures the government can avoid (i.e. cost avoidance). Questioned Costs are found in postaward reports and represent the funds COs should seek to recover for the government. The CO shall assess all of the information available, including the findings in these audit reports, and then make an independent decision on the contract based on all the facts. COs shall use the findings in the reports to negotiate better terms and conditions or pricing in order to achieve these potential recoveries/savings.

FAS management wants to ensure the acquisition workforce is supported in realizing cost avoidances as well as achieving recoveries when questionable costs have been identified.

Based on OIG Memorandum [A120050-3, Major Issues from Multiple Award Schedule Preaward Audits](#) dated March 8, 2013, there are opportunities to provide up-to-date guidance and training to the FAS acquisition workforce to support their ability to realize increased cost avoidances or achieve recoveries identified.

This IL provides up-to-date guidance on the process for utilizing preaward and postaward audits reports to realize cost avoidance or achieve recoveries identified. In addition to this IL, the acquisition workforce will receive training on the use of preaward and postaward contract audits in an on-line continuous learning module (CLM) course titled, "Awarding and Administering Multiple Award Schedules." The course is scheduled to be hosted through the Defense Acquisition University (DAU) and the Federal Acquisition Institute (FAI) by the end of this fiscal year.

3. Effective Date. Date of signature.
4. Expiration Date. This IL remains effective until cancelled.
5. Applicability. This IL applies to all GSA/FAS acquisition activities awarding and administering Federal Supply Schedule (FSS) contracts.
6. References. Chapters 4 and 5 to GSA Order [ADM P 2030.2D Internal Audit Follow-up Handbook](#); FAR [15.404-2](#); FAR [42.101](#); Procurement Information Notice (PIN) [2011-07 Standardizing Wage Rate Negotiation Objectives Under FSS Economic Price Adjustment \(EPA\) Clauses](#), PIN [2012-03 Economic Price Adjustments when a Vendor's Commercial Price List Contains Multiyear Pricing](#), PIN [2012-04 Verification of Most Favored Customer \(MFC\) Pricing](#), PIN [2012-05 Use of Cost Analysis When Evaluating Federal Supply Schedule Offers](#), PIN [2013-02 Evaluating Federal Supply Schedules with Price Point](#), and PIN [2013-03 Evaluation of Economic Price Adjustments – Ensuring Best Value throughout the Contract Period](#); [Supplement 5 to IL 2011-02 Mandating the Use of Pre-Negotiation, Price Negotiation and Final Proposal Revision Templates for the Federal Supply Schedules Program](#)
7. Instructions/Procedures:
 - I. Contract Audit Preparation
 - A. For contracts that will go through a preaward audit by OIG, COs shall send the letter of intent to exercise the option to the contractor 210 days prior to the contract expiration. This letter will also inform the contractor of the upcoming audit. See Attachment 1 for sample letter.
 - II. After Receipt of Preaward Report
 - A. The CO shall:
 1. If the contractor requests a copy, notify the Regional Inspector General for Auditing (RIGA) and Audit Manager to obtain their concurrence before releasing the report to the contractor. Upon

releasing the report, the CO shall send a copy of the transmittal letter to the RIGA and the GSA Office of Administrative Services, Management and Oversight Division (H1C).

2. Contact the RIGA before achieving a CO decision.
3. Sign the Decision Record (DR) and submit to the RIGA, with copy to H1C, within 60 days of the report issuance date. Signature on the DR represents:
 - a) Agreement with the auditor's calculation of and intent to achieve estimated savings for Funds Put to Better Use;
or
 - b) Disagreement or partial disagreement with the report finding(s).
4. In the event of disagreement with the report finding(s), include in the DR a written justification containing the basis for not agreeing.
5. In cases involving legal issues, the DR shall be cleared by the Office of General Counsel and shall reflect the legal basis for disagreement with the audit finding(s).
6. If the CO has further discussions with RIGA over the disagreement, prepare a document explaining the CO's final position relative to the report finding(s), including rationale for not using the report findings, any discussions with the RIGA, and the position of the RIGA.
 - a) The CO shall submit this document to the RIGA, copy the CO's supervisor, contracting director, H1C, and, as appropriate, the Regional Managerial Official.
7. Document the audit findings and the CO's final decision in a Pre-Negotiation Memorandum and consider the audit findings in developing the negotiation objectives. Documentation shall include analysis of other factors that may impact CO's ability to achieve the stated negotiation objectives. See Supplement 5 to IL 2011-02 for template Pre-Negotiation Memorandum.
8. Provide the RIGA advance notice of planned negotiation sessions with the contractor. Include a copy of the Pre-Negotiation Memorandum with the advance notice.
9. Invite the auditor to participate in all planned negotiation sessions.
10. In the Price Negotiation Memorandum (PNM), cite the audit number and summarize resultant negotiations as stated in the Pre-Negotiation Memorandum, including the CO's discussion(s) with the RIGA and the reasons for any variations from the preaward report findings. See Supplement 5 to IL 2011-02 for template PNM.

- a) A copy of the PNM shall be supplied to RIGA and H1C within 10 calendar days of close of negotiations.

11. Resolve all audit report findings and recommendations within 6 months of the report issuance date
12. Complete final contract action within 12 months of the report issuance date.

III. After Receipt of Postaward Report

A. The CO shall:

1. Notify the Regional Inspector General for Auditing (RIGA) and obtain their concurrence before releasing the report to the contractor. Upon releasing the report, the CO shall send a copy of the transmittal letter to the RIGA and the GSA Office of Administrative Services, Management and Oversight Division (H1C).
2. Contact the RIGA before achieving a CO decision.
3. Sign the Decision Record (DR) and submit to the RIGA, with copy to H1C, within 60 days of the report issuance date.
 - a) The DR shall detail the CO's position on all costs questioned in the report.
 - b) In the event of a CO's disagreement with the report finding(s), the response shall be cleared by the Office of General Counsel and shall reflect the legal basis for such decisions.
4. Document the audit findings and the CO's final decision in a Pre-Negotiation Memorandum and consider the audit findings in developing the negotiation objectives. Documentation shall include analysis of other factors that may impact CO's ability to achieve the stated negotiation objectives. See Supplement 5 to IL 2011-02 for template Pre-Negotiation Memorandum.
5. Provide the RIGA advance notice of planned negotiation sessions with the contractor. Include a copy of the Pre-Negotiation Memorandum with the advance notice.
6. Invite the auditor to participate in all planned negotiation sessions.
7. In the Price Negotiation Memorandum (PNM), cite the audit number and summarize resultant negotiations as stated in the Pre-Negotiation Memorandum, including the CO's discussion(s) with the RIGA and the reasons for any variations from the preaward report findings. See Supplement 5 to IL 2011-02 for template PNM.

- a) Submit copy of PNM to RIGA and H1C within 75 days of the report issuance date.
8. Resolve all audit report findings and recommendations within 6 months of the report issuance date
9. Complete final contract action within 12 months of the report issuance date.

8. Questions & Answers

Q1. What is the difference between a preaward audit and a postaward audit?

A1. The preaward audit can take place either (1) before an initial contract is awarded, or, more frequently, (2) before exercising the option. A preaward audit examines if the vendor's information is complete, accurate and current, and whether proper systems are in place to handle the requirements of the contract. A postaward audit examines things such as overbillings, billing errors, compliance with the Price Reduction clause and compliance with the Industrial Funding Fee and Sales Reporting clause of this contract.

Q2. What if the contractor tells me that they will not submit the requested information (or they will submit only a portion of the requested information)?

A2. Talk to the auditor to obtain an understanding of why the information is needed. Explain to the contractor why the information is needed. If you cannot persuade the contractor to submit the information, then arrange for the auditor to participate in a joint discussion with the contractor. Also, if the auditor hears from the contractor that the contractor will not submit the requested information, the auditor must Contact the CO, to request assistance.

Q3. What if additional information is received from the contractor, regarding the pricing or terms and conditions, after I receive the audit report?

A3. Share this information with the auditor, so that he can provide feedback as to whether the audit findings are impacted by this new information. It may be necessary for the auditor to issue a supplemental audit report.

Q4. Why do I need to contact the auditor before I fill out the DR (i.e. make my decision on the findings) or draft my Pre-Negotiation Memorandum?

A4. COs need to communicate with the auditor as early in the process as possible so that a reasonable exchange of information can occur regarding the report and any disagreements the CO has with the report. This early exchange will hopefully resolve outstanding issues between the CO and the audit report findings before commencement of negotiations.

Q5. How do you “resolve” an audit report?

A5. A preaward report is considered resolved when a CO decision is made, when a contract price is negotiated, or when a decision is made to cancel the proposed

award. A postaward report is considered resolved when OIG and contracting officials agree on action to be taken on reported findings and recommendations.

Q6. What is the difference between resolving an audit report and completing final contract action?

A6. See A5 above regarding resolution of audit report. Completing final contract action means execution of the pricing modification, exercising the option, cancelling or terminating the contract, or letting the contract expire.

Q7. What can the auditor do if I disagree with the report finding(s)?

A7. The RIGA, if in disagreement with the CO's final position or the original 60-day CO's response, retains the right to escalate the issues to the appropriate agency officials. The RIGA shall notify the Assistant Inspector General for Auditing (AIGA) or designee, who will initiate contact with the appropriate agency officials to resolve the issues. Furthermore, the auditor may request to the CO and/or appropriate agency officials that actions be temporarily suspended in order to discuss the differences.

Q8. What if the auditor requests that I temporarily suspend contracting actions in the event of disagreement with the report finding(s)?

A8. The CO should consider granting the OIG's request and strive to keep open lines of communication as both parties discuss each other's positions and hopefully resolve the differences. Ultimately, the CO makes the final decision on whether to proceed with contract action.

Q9. How do I document audit-related issues in the Pre-Negotiation Memorandum or Price Negotiation Memorandum?

A9. Supplement 5 to IL 2011-02 updates the template Pre-Negotiation Memorandum and Price Negotiation Memorandum to demonstrate how to document audit-related issues.

Q10. Am I expected to achieve 100% of the audit findings in negotiations?

A10. The OIG recognizes that negotiation objectives may involve the use of report finding(s) *as well as* other techniques and procedures set forth in the FAR and/or other guidance. Keep in mind that there are various price and cost analysis tools available to the CO when determining the best price for the government. See PINs [2011-07](#), [2012-03](#), [2012-04](#), [2012-05](#), [2013-02](#), and [2013-03](#) for guidance on using these tools.

The OIG also recognizes that negotiations may not always yield the CO's targeted negotiation objectives or the auditor's identified savings.

Q11. Why do I have to inform the auditor of when I plan on holding negotiations or invite them to the negotiation session?

A11. The CO shall give the auditor advance notice of negotiation with the contractor so that the auditor has time to make plans to attend the negotiation. The

auditor can provide the CO with support and address any audit-related matters that may come up during negotiations. The CO still has ultimate responsibility for conducting the negotiation and for the negotiation's outcome.

Q12. How is FAS going to make sure audit reports get resolved timely and correctly?

A12. Each Portfolio is responsible for tracking active audits within their acquisition centers and ensuring the resultant reports' findings is resolved timely.

In addition, Acquisition Management will seek to add monitoring of compliance with the guidance in this IL (e.g. notification requirements, documentation requirements) to the procurement management reviews (PMRs) conducted by the Office of Governmentwide Policy.

ATTACHMENT 1

MODEL CO LETTER - NOTIFICATION OF INTENTION TO EXERCISE OPTION TO EXTEND

CONTRACTOR NAME

RE: [MAS Contract Number] Option to Extend

Dear _____:

This letter is to notify you, in accordance with contract clause I-FSS-163, that we are considering extending the above-captioned Multiple Award Schedule (MAS) contract through exercise of the contract option. This letter also serves to notify you that GSA has elected to conduct a pre-award audit of the Commercial Sales Practice (CSP) pricing information that will become the basis for the pricing on the contract extension. The purpose of a pre-award audit, conducted under the authority of GSAM § 515.408(a)(4) (through FAR 52.215-21(a)(4)) Alternate IV, is to ensure that the CSP information is an accurate, current, and complete depiction of your pricing and practices.

Please submit CSP data representing your current pricing policies and practices no later than 150 days before the expiration of the contract to the undersigned and to the Office of the Inspector General (OIG) audit contact noted in this letter. If your CSP data, including information on your basis of award customer, has not changed, please provide a statement to that effect to both the CO and the OIG contact within that same time period. If a "no change" statement is provided, the audit will seek to verify the accuracy of the latest CSP information submitted and the fact that there have not been any subsequent changes.

The OIG contact is [NAME; ADDRESS; PHONE NUMBER]. Please contact him/her within 7 days, and be prepared to discuss some general matters regarding your CSP. The auditor will be interested in both the methodology and work papers that were used to develop the CSP information plus the source sales data reviewed in preparation of the CSP information. If any sales information or classes of sales information were excluded from consideration when preparing the CSP, the characteristics of those sales or classes of information should be described along with the reasons for their exclusion.

The Government auditor will require access to your company's billing and information systems to the extent necessary to test and verify the completeness and accuracy of the information presented. Specific data requests will be made in writing prior to the initiation of the audit. Please note that prompt compliance with the auditor's requests is required, and failure to provide complete information to the auditor within 60 days of this letter will result in FSS electing not to extend the contract. Failure to cooperate with the GSA OIG could result in contract cancellation in accordance with GSAR Clause 552.238-73, Cancellation. Cooperation means providing requested documentation/data in a timely manner as stipulated by the GSA OIG.

We will also conduct a review of your billing system to ensure that you can reliably bill MAS users under the contract, and that you can accurately report contract sales data.

Please contact me on [CO's PHONE NUMBER] with any questions you may have regarding the option to extend, or call the audit contact with any audit-related questions.

Sincerely,

CO

Cc: Office of Audits contact (by e-mail or hardcopy)